

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 28, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: SB 400; SB 263; SB 447; SB 410

EXECUTIVE ACTION ON SB 400

Motion: REP. FACEY moved that SB 400 BE CONCURRED IN.

Discussion:

The Committee discussed this railroad vandalism bill.

Motion/Vote: REP. FACEY moved that SB 400 BE AMENDED. (Facey conceptual amendment on Lines 19 and 23 to increase penalty from \$500 to \$1000.) Motion carried 18-0, by voice vote. (REPS. GALLUS and PARKER by Vice Chair voice proxy.)

Motion: REP. GUTSCHE moved that SB 400 BE CONCURRED IN AS AMENDED.

Discussion:

The Committee discussed whether this was another designer crime. REP. NOENNIG felt it was the ultimate designer crime. REP. CLARK felt that although it may be a designer crime, it is important because of the inherent risk to public safety if railroad property is messed with. REP. STOKER agreed stating that theft of military equipment and supplies from a railroad boxcar could have serious consequences to public safety. He emphasized that he wants to give the prosecution the ability to enforce the laws which protect the public.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 153}

Vote: Motion that SB 400 BE CONCURRED IN AS AMENDED carried 17-1, by voice vote, with CHAIRMAN SHOCKLEY voting no. (REPS. RASER and GALLUS by Vice Chair voice proxy.) REP. FACEY will carry.

{Tape: 1; Side: A; Approx. Time Counter: 153 - 340}

EXECUTIVE ACTION ON SB 263

Motion: REP. STOKER moved that SB 263 BE CONCURRED IN.

Discussion:

CHAIRMAN SHOCKLEY stated that this bill codifies JCE regarding child hearsay. He stated that he would make some amendments on this bill.

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{Tape: 1; Side: B; Approx. Time Counter: 1 - 509}

REP. PARKER commented on the narrow balance of victim hearsay between the victim's and the defendant's rights. **REP. LANGE** stated he spoke with his county attorney who supports this bill and that codifying JCE is very important.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 24}

Motion/Vote: **REP. SHOCKLEY** moved that SB 263 BE AMENDED. Motion carried 15-3, by roll call vote, with **REPS. MALCOLM, NEWMAN, and RICE** voting no.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 48}

Motion: **REP. SHOCKLEY** moved that SB 263 BE CONCURRED IN AS AMENDED.

Motion/Vote: **REP. HARRIS** moved that SB 263 BE AMENDED. (Harris amendment defining minor.) Motion carried 17-1, by voice vote, with **REP. RICE** voting no.

Motion: **REP. SHOCKLEY** moved that SB 263 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN SHOCKLEY explained to the Committee that this bill expands JCE. JCE dealt with child hearsay in cases where the child was a victim of a sexual offense. This amendment would expand the hearsay exception to include instances where a child is a victim of, or witnesses, a violent or sexual offense. He emphasized that this bill lays out the criteria a judge would use to determine if the hearsay would be able to come into evidence.

{Tape: 2; Side: A; Approx. Time Counter: 48 - 99}

REP. PARKER addressed concerns brought up by **REP. RICE** regarding cases in which children lie and may later recant their testimony but meanwhile, the defendant's life is destroyed. He stated that the court evaluates the time, content, and circumstances under which the statement was made. He gave the example of the judge perhaps giving more weight to a child's excited statement to a police officer right after the incident occurred. He emphasized that the judges have a method to sift through the statements and

that these hearings are delicate. He stressed that this bill would provide protections to address REP. RICE's concerns.

Vote: Motion that SB 263 BE CONCURRED IN AS AMENDED carried 15-3, by roll call vote, with REPS. LASZLOFFY, RICE, and SALES voting no. To be carried by REP. LANGE.

{Tape: 2; Side: A; Approx. Time Counter: 99 - 218}

EXECUTIVE ACTION ON SB 447

Motion: REP. FACEY moved that SB 447 BE CONCURRED IN.

{Tape: 2; Side: A; Approx. Time Counter: 218 - 246}

Discussion:

REP. NOENNIG stated that truth is an absolute defense and consent is an absolute privilege. He stated there was an employee referral statute prior to 1999. **John MacMaster** explained that problems arose when the Legislature amended the law in 1999.

REP. NOENNIG stated that this bill as first presented was very burdensome to employees. He explained that Section 2 of the bill is the biggest problem but he felt it could be fixed. He stated that this bill is not as complicated as opponents made it sound. He stated the rest of the bill complies with common law regarding defamation. He stressed again that Section 2 is the biggest problem but believed it could be easily fixed. He stated that striking the entire bill except Section 5 would put the law into "no man's land."

Motion/Vote: REP. FACEY moved that SB 447 BE TABLED. Motion carried 13-5, by roll call vote, with REPS. GALLUS, HARRIS, NOENNIG, SALES, and SHOCKLEY voting no.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 139}

EXECUTIVE ACTION ON SB 410

Motion: REP. RICE moved that SB 410 BE CONCURRED IN.

{Tape: 2; Side: B; Approx. Time Counter: 139 - 155}

Discussion:

REP. HARRIS stated that this bill is unconstitutional. The Montana Constitution provides a remedy for every injury such as an injunction. This bill would prohibit injunctions. **REPS. MALCOLM** and **CLARK** stated this bill is too much and that they cannot support it.

Motion/Vote: **REP. GALLUS** moved that SB 410 BE TABLED. Motion carried 15-3, by voice vote, with **REPS. EVERETT, RICE, and SALES** voting no.

{Tape: 2; Side: B; Approx. Time Counter: 155 - 193}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh66aad)